

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DAVID A. EPSTEIN,

Petitioner,

Case No. 07-11178
Honorable Paul D. Borman

v.

LINDA METRISH,

Respondent.

_____ /

**ORDER DENYING PETITIONER'S MOTIONS FOR
REOPENING TIME FOR APPEAL (DOCKET ## 11 AND 12)**

Petitioner, David A. Epstein, currently incarcerated at the Kinross Correctional Facility in Kincheloe, Michigan, filed a *pro se* habeas corpus petition pursuant to 28 U.S.C. § 2254. On February 13, 2008, the Court issued an Opinion and Order denying Petitioner's petition for writ of habeas corpus and declining to issue a certificate of appealability. Now before the Court is Petitioner's "Motion For Reopening Time For Appeal," filed and docketed on May 1, 2008. (Docket # 11.) Petitioner has also filed a second "Motion For Reopening Time For Appeal," filed and docketed on May 5, 2008. (Docket # 12.) Petitioner signed and dated both motions on April 15, 2008. This Order therefore addresses both motions, as they are one in the same.

Federal Rule of Appellate Procedure 4(a)(6) states in pertinent part:

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be

appealed within 21 days after entry;
(B) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
(C) the court finds that no party would be prejudiced.

Fed.R.App.P. 4(a)(6).

Pursuant to the above-stated rules, Petitioner was required to file a motion to reopen the time for filing an appeal within seven (7) days of the date upon which he received notice of the Court's judgment. Petitioner did not file these motions until more than two months after he received notice of the denial. Thus, Petitioner failed to satisfy all of the preconditions for reopening the time to file an appeal.

Accordingly,

IT IS ORDERED that Petitioner's motions for reopening the time in which to file an appeal (Docket ## 11 & 12) are **DENIED**.

s/Paul D. Borman

PAUL D. BORMAN

UNITED STATES DISTRICT JUDGE

Dated: May 19, 2008

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on May 19, 2008.

s/Denise Goodine

Case Manager